



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

**eFILED**

8/19/2021 3:49:30 PM

Office of West Virginia  
Secretary Of State

**NOTICE OF PUBLIC COMMENT PERIOD**

AGENCY: Environmental Protection Secretarys Office

TITLE-SERIES: 60-10

RULE TYPE: Procedural Amendment to Existing Rule: No Repeal of existing rule: No

RULE NAME: Purchasing Procedure

CITE STATUTORY AUTHORITY: W. Va. Code §5A-1-12.

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 09/20/2021 5:00 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Jane Casewell

ADDRESS: 601 57th St SE

Charleston, WV 25304

EMAIL:

PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

This rule brings DEP into compliance with West Virginia Code 5A-1-12, which required agencies to draft rules for purchasing where they have been declared exempt. These rules provide the method by which the agency will analyze and award bids for reclamation construction contracts.

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN THE RULE AND A STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE:

This procedural rule is required by West Virginia Code 5A-1-12. That provision states: 'An agency that has been exempted from some or all of the requirements of this chapter, by either a provision of this chapter or in another provision of this code, shall adopt procedural rules, under §29A-3-1 et seq. or §29A-3A-1 et seq. of this code, establishing its purchasing procedures.'

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

No impacts on revenues of state government are expected.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

No impacts on special revenue accounts are expected.

C. ECONOMIC IMPACT OF THE RULE ON THE STATE OR ITS RESIDENTS:

No impacts on the state or its residents are expected.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2021 Increase/Decrease (use "-")	2022 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

None are expected

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Jason E Wandling -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

**TITLE 60**  
**PROCEDURAL RULE**  
**DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
**SECRETARY'S OFFICE**

**SERIES 10**  
**PURCHASING PROCEDURE**

**§60-10-1. General.**

1.1. Scope. -- This rule is to ensure certain controls and accountabilities are in place for the procurement of construction reclamation contracts by the Department of Environmental Protection.

1.2. Authority. -- W. Va. Code §5A-1-12.

1.3. Filing Date. --

1.4. Effective Date. --

**§60-10-2. Definitions.**

2.1. "Department" means the West Virginia Department of Environmental Protection created and established under W. Va. Code §22-1-1 *et seq.*

2.2. "Local Governmental Agencies" means counties; municipalities; watershed improvement districts; soil conservation districts; sanitary districts; public service districts; drainage districts; regional governmental authorities and any other governmental agency, entity, political subdivision, public corporation or agency having the authority to acquire, construct or operate public water facilities, storm-water systems or wastewater facilities.

2.3. "RFP" means Request for Proposal.

2.4. "Secretary" means the cabinet secretary of the West Virginia Department of Environmental Protection.

2.5. "State" means the State of West Virginia.

**§60-10-3. Overview.**

3.1. The Department is the charged by the West Virginia Legislature with the mission to use all practicable means and measures to prevent or eliminate harm to the environment and biosphere, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic and other requirements of present and future generations.

**§60-10-4. Purchasing Requirements for Construction or Reclamation Contracts.**

4.1. All procurement of construction or reclamation services by the Department are in accordance with W. Va. Code §5-22 Government Construction Contracts and are subject to expenditure approval.

4.2. The Secretary shall adopt standard specification terms and conditions which shall establish the requirements to which the services to be contracted for by the Department must conform.

4.3. Requirements for all construction or reclamation projects:

4.3.a. The proposed purchase must receive the approval of an Authorized Designee or the Program Director.

4.3.b. All solicitations for construction or reclamation contracts must be publicly advertised using advertising media such as the wvOASIS Vendor Self-Service Portal.

4.3.c. All responses to solicitations must be received electronically and remain sealed until the system releases the bid information at the specified date and time stated on the solicitation.

4.3.c.1. The vendor is solely responsible for the submittal of the bid prior to the appointed date and hour of the bid close.

4.3.d. All results of bids received will be posted on the DEP' s website and available within 24 hours of bid close time.

4.3.e. All bidders will be notified of either successful or unsuccessful bid or quote in writing, which may be via e-mail.

4.3.f. Contracts will be awarded to the lowest responsible bidder meeting the required specifications.

4.3.g. Any or all bids and/or quotes may be rejected if there is a sound, documented reason for such rejection.

4.3.h. The proposed contract must receive the approval of the Director or other officer or employee with full signature authority.

#### **§60-10-5. Emergency Construction or Reclamation Contracts.**

5.1 Any request to procure construction or reclamation services on an emergency basis must be submitted in writing to the DEP Procurement Office. The Assistant Chief shall review a spending unit's written request and issue written approval or disapproval.

5.2 Approval to construction or reclamation services on an emergency basis will permit the division or office to purchase the required services directly from a vendor. Provided, however, that the division or office must obtain three bids, if possible. Any required documentation must be submitted to the DEP Procurement Office as soon as possible for processing.

5.3 What qualifies as an emergency under this subsection shall be evaluated by the Assistant Chief on a case by case basis, but will at least include unforeseen events or circumstances, including delays by contractors, delays in transportation, or an unanticipated volume of work, as well as procurement of specific commodities for immediate delivery related to an official declaration of emergency by the Governor or federal officials. Emergency purchases are not used for hardship resulting from neglect, poor planning, or lack of organization by the Department. Competitive bids shall be obtained if possible.

#### **§60-10-6. Protests.**

6.1. Submission of Protest.

6.1.a. Protests based on bid or specifications must be submitted no later than five (5) working days prior to the bid close. Protest of a purchase order or contract award must be submitted no later than five (5) working days after the award. The vendor is responsible for knowing the bid close and award dates. Protests received after these dates may be rejected at the option of the Secretary or designee.

6.1.b. All protests must be submitted in writing to the Department and contain the following information:

6.1.b.1. The name and address of the protestor;

6.1.b.2. The requisition, solicitation, purchase order or contract numbers;

6.1.b.3. A statement of the grounds of protest;

6.1.b.4. Supporting documentation, if necessary; and

6.1.b.5. The resolution or relief sought.

6.1.c. Failure to submit the information shall be grounds for rejection of the protest by the Secretary.

6.2. Protest Review.

6.2.a. The Secretary or his/her designee shall review the matter of protest and issue a written decision. A hearing may be conducted at the option of the Secretary or assigned designee. Continuation or delay of a purchase order or contract award is at the discretion of the Secretary.

6.2.b. The Department may refuse to review any protests when the matter involved has been decided in a previous protest by the Department.

#### **§60-10-7. Permitted Exceptions.**

7.1. Emergencies. Exceptions may be made in the event of federally declared emergencies or State declared emergencies affecting the Department or its programs.

7.2. Documentation of Exceptions. The reasoning for and approval of exceptions should be noted in the supporting documentation and/or the payment/voucher request. Any exception shall require the written approval of the Director or other officers or employees with full signature authority.

#### **§60-10-8. Public Records.**

8.1 All bids received, and contracts awarded are publicly available for viewing.

#### **§60-10-9. Severability.**

9.1. If any word, phrase, or provision of this rule is held to be invalid, the remainder of the rule shall, to the fullest extent possible, not be affected by that holding.